

HOUSE BILL NO. 454

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A RENEWABLE RESOURCE ELECTRICAL PRODUCTION TAX; PROVIDING FOR DISTRIBUTION OF THE REVENUE TO IMPACTED COUNTIES TO THE ENTITIES THAT RECEIVE COAL SEVERANCE TAX REVENUE; PROVIDING FOR ADMINISTRATION AND DISTRIBUTION OF THE TAX; PROVIDING A STATUTORY APPROPRIATION; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-51-101, 15-51-102, 15-51-103, 15-51-113, 17-2-124, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. County renewable resource electrical production impacts account.

(1) There is an account in the state special revenue fund provided for in 17-2-102 known as the county renewable resource electrical production impacts account.

(2) The revenue distributed pursuant to 15-51-103 must be deposited in the account.

(3) Money in the account is statutorily appropriated as provided in 17-7-502 to the department of revenue for annual distribution to counties based on their ratio of collections of the tax provided for in 15-51-101 to statewide collections.

(4) Counties shall use distributions from the account to address impacts from renewable resource electrical production, including but not limited to road construction and maintenance and other infrastructure needs.

Section 2. Section 15-51-101, MCA, is amended to read:

"15-51-101. Rate of tax -- electrical energy producers -- license tax -- renewable resource electrical production tax -- definitions. (1) In addition to the license tax now provided by law, each person or

1 ~~other organization now engaged in the generation, manufacture, or production of electricity and electrical~~
2 ~~energy in the state of Montana, either through water power or by any other means, for barter, sale, or exchange~~
3 ~~(and hereinafter referred to as the "producer")~~ producer, eligible renewable resource producer, or both shall, on
4 or before the 30th day after each calendar quarter, quarterly periods ending March 31, June 30, September 30,
5 and December 31, render a statement to the department of revenue showing the gross amount, except for
6 actual and necessary plant use, required to produce the energy of electricity and electrical energy produced,
7 manufactured, or generated during the preceding calendar quarter without any deduction and shall pay a
8 license tax thereon in the sum of \$.0002 per kilowatt hour on all such ~~pay the applicable taxes in subsection (2)~~
9 on the electricity and electrical energy generated, manufactured, or produced, measured at the place of
10 production and as shown on the statement ~~required in the manner and within the time hereinafter provided by~~
11 this chapter.

12 (2) (a) An electrical energy producer's license tax must be paid by each producer at a rate of 0.02
13 cent a kilowatt hour.

14 (b) A renewable resource electrical production tax must be paid by each eligible renewable
15 resource producer of electrical energy at a rate of 0.1 cent a kilowatt hour. An eligible renewable resource
16 producer with a total nameplate capacity for all facilities of 25 megawatts or less is exempt from the tax in this
17 subsection (2)(b).

18 (3) As used in this section, the following definitions apply:

19 (a) "Eligible renewable resource producer" means a person or organization engaged in the
20 generation, manufacture, or production of electricity and electrical energy in the state by a producer of eligible
21 renewable resources as defined in 90-4-1005, regardless of ownership.

22 (b) "Producer" means each person or organization engaged in the generation, manufacture, or
23 production of electricity and electrical energy in the state either through water power or by any other means for
24 barter, sale, or exchange."

25

26 **Section 3.** Section 15-51-102, MCA, is amended to read:

27 **"15-51-102. Payment of tax -- may be itemized on customers' bills.** The license tax and the
28 renewable resource electrical production tax must be remitted with the statement and paid on or before the 30th

1 day of the month after each calendar quarter. A customer's bill or statement may contain an itemized amount of
2 the tax imposed by 15-51-101."

3

4 **Section 4.** Section 15-51-103, MCA, is amended to read:

5 **"15-51-103. Disposition of revenue -- penalty and interest on delinquency.** (1) The department
6 shall, ~~in accordance with the provisions of 17-2-124, promptly remit the collected taxes to the state treasurer~~
7 distribute revenue received from the renewable resource electrical production tax as follows:

8 (a) 50% to the county renewable resource electrical production impacts account provided for in
9 [section 1]; and

10 (b) 50% for the purposes provided for in 15-35-108, excluding the distribution to the coal
11 severance tax trust fund in 15-35-108(1).

12 (2) Taxes not paid on the due date are delinquent, and penalty and interest must be added to the
13 delinquent taxes as provided in 15-1-216."

14

15 **Section 5.** Section 15-51-113, MCA, is amended to read:

16 **"15-51-113. Penalty for violation -- enforcement.** Any producer ~~referred to in 15-51-101 who shall~~
17 ~~violate that violates~~ any of the provisions of this chapter or who ~~shall fail fails~~ to pay the license tax ~~herein~~
18 ~~provided for or any part thereof or the renewable resource electrical production tax~~ when due ~~shall be is~~ liable
19 for three times the amount of the unpaid or delinquent tax in a civil action instituted for that purpose in a court of
20 competent jurisdiction in the name of the state of Montana, and ~~in such suit, upon application of the state, an~~
21 injunction may be issued by application, without requiring any bond, restraining the defendant from continuing
22 to produce electricity or electrical energy ~~so as~~ long as the tax due ~~hereunder from said defendant~~ remains
23 delinquent."

24

25 **Section 6.** Section 17-2-124, MCA, is amended to read:

26 **"17-2-124. Disposition of money from certain designated license and other taxes.** (1) The state
27 treasurer shall deposit to the credit of the appropriate fund in accordance with the provisions of subsection (3)
28 all money received from the collection of taxes and fees.

1 (2) The department of revenue shall deposit to the credit of the state general fund all money
 2 received from the collection of license taxes and all net revenue and receipts from all sources, other than
 3 certain fees, under Title 16, chapters 1 through 4 and 6, and the renewable resource electrical production tax
 4 pursuant to 15-51-103.

5 (3) The distribution of tax and fee revenue must be made according to the provisions of the law
 6 governing allocation of the tax or fee that were in effect for the period in which the tax or fee revenue was
 7 recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of
 8 administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

9 (4) All refunds of taxes or fees must be attributed to the funds in which the taxes or fees are
 10 currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the
 11 interest and penalties are currently being recorded."
 12

13 **Section 7.** Section 17-7-502, MCA, is amended to read:

14 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 15 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without
 16 the need for a biennial legislative appropriation or budget amendment.

17 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with
 18 both of the following provisions:

19 (a) The law containing the statutory authority must be listed in subsection (3).

20 (b) The law or portion of the law making a statutory appropriation must specifically state that a
 21 statutory appropriation is made as provided in this section.

22 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-
 23 11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-
 24 807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218;
 25 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; [section 1]; 15-65-121; 15-
 26 70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-
 27 215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-
 28 305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-

1 26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-
2 402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213;
3 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115;
4 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-
5 13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006;
6 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-
7 102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

8 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
9 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
10 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
11 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined
12 by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have
13 statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the
14 inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement
15 system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410
16 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental
17 benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on
18 occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117
19 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30,
20 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025;
21 pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8,
22 Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec.
23 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017,
24 the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch. 50, L. 2019, the inclusion of 37-50-
25 209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates
26 June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June
27 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to
28 sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139,

1 L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion
 2 of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004
 3 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30,
 4 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and
 5 pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

6
 7 **NEW SECTION. Section 8. Codification instruction.** [Section 1] is intended to be codified as an
 8 integral part of Title 15, chapter 51, part 1, and the provisions of Title 15, chapter 51, part 1, apply to [section 1].

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 10 **NEW SECTION. Section 9. Effective date.** [This act] is effective July 1, 2023.

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 12 **NEW SECTION. Section 10. Applicability.** [This act] applies to the generation, manufacture, or
 13 production of electricity and electrical energy by an eligible renewable resource producer after June 30, 2023.

14 - END -